clerk usually opens the plaintiff's letters. *State v. Syphrett* (1887) 27 S. C. 29, 2 S. E. 624; *Sharp v. Skues* (1909, C. A.) 25 T. L. R. 336. Likewise one is free from liability if the plaintiff himself voluntarily and unreasonably exhibits the defamatory letter to a third person. *Lyon v. Lash* (1906) 74 Kan. 745, 88 Pac. 262; *Konkle v. Haven* (1905) 140 Mich. 472, 103 N. W. 850; *Sylvis v. Miller* (1895) 96 Tenn. 94, 33 S. W. 921. But it is uniformly held that there is a publication if the defendant intended or should have foreseen that under the circumstances some third person would read the letter. *Roberts v. Eng. Mfg. Co.* (1908) 155 Ala 414, 46 So. 752; *Allen v. Wortham* (1890) 89 Ky. 485, 13 S. W. 73; (1916) 25 YALE LAW JOURNAL, 246. In the last analysis, therefore, the underlying question appears to be one of causation. So, in the instant case, it seems to have been properly held that the disclosure was a natural and probable consequence of the defendant's act.

SALES—BUYER'S INSOLVENCY NO JUSTIFICATION FOR SELLER'S BREACH.—Upon the plaintiff's insolvency, the defendant entirely refused to perform his contract to furnish the plaintiff with building materials which were to be paid for as deliveries were made. The plaintiff had also failed to meet other debts which he owed to the defendant. The plaintiff sued for breach of contract. *Held,* that the plaintiff could recover. *Keppelon v. Ritter Flooring Co.* (1922, N. J. L.) 116 Atl. 491.

Insolvency merely relieves tne vendor from his agreement to give credit; his duty of immediate performance becomes conditional upon tender of payment. *Pardee v. Kanady* (1885) 100 N. Y. 121, 2 N. E. 885. The existence of other circumstances, however, in addition to the fact of insolvency, may privilege the seller not to perform. For example, where the buyer gave notice to the seller of his insolvency and made no intimation of any intention to enforce the contract, the facts operated as an express abandonment. *Morgan v. Bain* (1874) L. R. 10 C. P. 15; *Hobbs v. Columbia Falls Brick Co.* (1892) 157 Mass. 109, 31 N. E. 756. Inability on the part of the buyer to perform his part of the contract at the time fixed for delivery privileges the seller not to perform. *Diem v. Koblitz* (1892) 49 Ohio St. 41, 29 N. E. 1124. A seller should not be prejudiced, and is therefore under no duty to accept the notes of the assignee for the benefit of the vendee's creditors in place of the vendee's notes. *Rappleye v. Racine Seeder Co.* (1890) 79 Iowa, 220, 44 N. W. 363. Nor is he required to hold the goods for an unreasonable time awaiting the decision of the vendee's receiver in bankruptcy to elect to perform the contract. *Sprague & Warner Co. v. Iowa Mercantile Co.* (1919) 186 Iowa, 488, 172 N. W. 637. The assignees of an insolvent buyer cannot adopt a contract in part where it calls for deliveries over a period of years. *Hanna v. Florence Iron Co.* (1918) 222 N. Y. 290, 118 N. E. 629. Yet it has been held that the seller must perform all conditions precedent to his right to payment. *Gibson v. Carruthers* (1841, Exch.) 8 M. & W. 321. It has been suggested that requiring the seller to make such expensive preparations is an unreasonable hardship if the buyer proves unable to pay. 2 Williston, *Contracts* (1920) sec. 880. Nevertheless, if the vendee's conduct in business discloses the ordinary evidences of insolvency (for example, if his commercial paper is being protested), the seller may exercise the right of stoppage *in transitu,* and may recall the goods unless tendered the purchase price. *Diem v. Koblitz, supra.* It has been argued that since he has this right, *a fortiori* the buyer's insolvency should excuse him from delivering the goods at all. See the dissenting opinion in *Gibson v. Carruthers, supra.* The federal rule is that bankruptcy is an immediate anticipatory breach. *Central Trust Co. v. Chicago Audit. Ass'n.* (1916) 240 U. S. 581, 36 Sup. Ct. 412. Although open to criticism, this rule is at least indicative of an indisposition to require a tender by the solvent party. 2 Williston, *loc. cit.* The decision in the instant case, however, to the effect that the

insolvency and the failure to pay antecedent debts owed to the seller does not privilege him to repudiate the contract, is undoubtedly correct.

SPECIFIC PERFORMANCE—FRAUDULENT MISREPRESENTATIONS OF VENDOR NO BAR.—The defendant, a purchaser of three tracts of oil land, having discovered that the vendor had overstated the production of the wells on the second tract, obtained a change in the contract extending the time of payment for one year. Subsequently the defendant discovered that the wells on the first tract were totally non-productive, and therefore refused to pay the balance due. The vendor sued for specific performance. *Held;* that specific performance should be granted. *Clark v. Wheatley* (1922, C. C. A. 6th) 281 Fed. 55.

At first sight the decision seems contrary to the rule that "actual fraud, in any of its phases, ... will *a fortiori* defeat the remedy of specific performance." Pomeroy, *Equity Jurisprudence* (4th ed. 1918) sec. 889. Nevertheless the conclusion of the court is correct and in accord with the weight of authority. The reasoning chiefly relied upon, however—that the defendant, knowing of the fraud as to one tract at the time of the "accord and satisfaction" should have known that he was being deceived as to the other tracts—seems unsound. There are four possible remedies for the parties where, in a case of this type, one fraudulently takes advantage of the other's lack of vigilance. The court admits that if the now defendant sued in deceit at law the question of his diligence in discovering the fraud would be of no moment. See *Pryor v. Foster* (1891) 130 N. Y. 171, 29 N. E. 123. There is a conflict as to the effect of the defendant's negligence where the plaintiff sues him for breach of contract, but there, too, "the better view . . . . is . . . . to deny him . . . . the privilege of excusing his own misconduct by the stupidity or credulity of the defrauded party." 3 Williston, *Contracts* (1920) sec. 1516. In equitable actions, even where the negligent plaintiff sues for affirmative relief (rescission), "the modern tendency is certainly toward the doctrine that negligence in trusting to a misrepresentation will not . . . . deprive the defrauded person of his remedy." 3 Williston, *op. cit.* sec. 1516; see *Campbell v. Fleming* (1834, K. B.) 1 Adol. & El. 40 (further fraud discovered after new agreement); Fry, *Specific Performance* (6th ed. 1921) sec. 741. Certainly then, where the wrongdoer sues to compel specific performance, as in the instant case, it is indeed remarkable for equity to aid a knave because his victim was a fool. See *Reynell v. Sprye* (1852, Ch.) 1 DeGex, M. & G. 658, 709; *Mather v. Barnes* (1906, C. C. W. D. Pa.) 146 Fed. 1000. And it seems that the defendant's delay in bringing suit for affirmative relief, after discovering the additional fraud, should not clean the plaintiff's hands when he asks the aid of a court of equity. But the reason, mentioned only incidentally by the court, that no damage resulted to the defendant from the fraud because the transaction as a whole was profitable, is the one on which the case can best be sustained, since this is usually held to vitiate the fraud as a defense both at law and in equity. Pomeroy, *op. cit.* sec. 898. However, there is a strong dictum that if the plaintiff is fraudulent, damage to the defendant is not necessary to enable him to resist specific performance. *Kelly v. Ry.* (1888) 74 Calif. 557, 16 Pac. 386. Connecticut has gone so far as to give the defrauded person the remedy of rescission—*a fortiori,* it is likely that fraud without damage would be a defense in that jurisdiction to a suit for specific performance. *Morrow v. Ursini* (1921) 96 Conn. 219, 113 Atl. 388. This rule, although both logical and just, is still in the hopeless minority; the overwhelming majority is with the instant case.